IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)
Description of case

Writ Petition No. 844 of 2002 (M/B)

Date of decision: 28th March, 2006

A.F.R. (Approved for Reporting)
~~Not Approved for Reporting.~~

Date 28.3.2006. Initial of Judge

Note: Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 844 of 2002 (M/B)

Kapoor Gramo Udhyog,
Vikas Sansthan,
6, Yadavpuri, Ram Nagar, Roorkee,
Tehsil Roorkee, District Haridwar,
Through its President Smt. Manorama Sharma,
W/o Sri Date Ram Sharma,
R/o Kashipuri Dehradun Road,
Roorkee, District Haridwar. …… Petitioner

Versus

1. Chairman,
   Khadi and Village Industries Commission,
   Irla Road, Vile Parle (West),
   Bombay-56.
2. Director (Regional Office),
   Khadi & Gramo Udyog Commission,
   Kanwali, Dehradun.
3. Collector, Haridwar.
4. Thesildar,
   Roorkee, District Haridwar. ……. Respondents

Mr. Lok Pal Singh, Advocate for the petitioner.
Mr. Sudhir Singh, Advocate for respondents Nos. 1 and 2.
Mr. N.C. Gupta, Standing Counsel for the State of Uttaranchal.

JUDGMENT

Coram: Hon. Rajeev Gupta, C.J.
Hon. M.M. Ghildiyal, J.

RAJEEV GUPTA, C.J. (Oral)

Mr. Lok Pal Singh, Advocate for the petitioner.

Mr. Sudhir Singh, Advocate for respondents Nos. 1 & 2.

Mr. N.C. Gupta, Standing Counsel for respondents Nos. 3 & 4.

They are heard.

2. The petitioner has filed this writ petition for the following reliefs:

> "i. issue a Writ, order or direction in the nature of certiorari quashing the demand letter dated 24.10.2002 contained annexure no. 5 and citation dated 22.11.2002 contained annexure no. 7 to this Writ Petition.

ii. issue a Writ order or direction in the nature of mandamus commanding the Respondent no. 1 & 2 to refer the dispute to the Tribunal constituted by the Central Govt. to redressed the dispute between the Petitioner and the Respondent no. 1 & 2.

iii. Cost of the Writ Petition be award in favour of Petitioner against the Respondent no. 1 & 2.

iv. Any other relief which this Hon'ble Court may deem fit and proper in the circumstance of the case may be passed in favour of Petitioner."

3. The petitioner is challenging the recovery proceedings initiated against him vide Annexure 7.

4. The petitioner was sanctioned loan of Rs. 2,50,000/- (Rupees Two Lakhs and Fifty Thousand only) in the year 1993. The default by the petitioner in making payment of the instalments resulted in recovery proceedings vide Annexure 7.

5. The learned counsel for the petitioner submitted that respondents Nos. 1 and 2 have erred in initiating recovery proceedings without having recourse to the provisions contained in Sub-Section (2) of Section 19-B of the Khadi and Village Industries Commission Act, 1956.

6. The learned counsel for respondents Nos. 1 and 2, on the other hand, submitted that Sub-Section (2) of Section 19-B of the Act has no application to the facts of the case.

7. Before examining the rival submissions of the learned counsel for the parties, we deem it proper to reproduce Section 19-B of the Act, which reads as follows:

"19-B. Recovery of monies due to the Commission as arrears of land revenue.- (1) Any sum payable to the Commission under any agreement, express or implied, or otherwise howsoever, may be recovered in the same manner as an arrear of land revenue.

(2) If any question arises whether a sum is payable to the Commission within the meaning of sub-section (1), it shall be referred to a Tribunal constituted

> by the Central Government for the purpose which shall, after making such inquiry as it may deem fit and after giving to the person by whom the sum is alleged to be payable an opportunity of being heard, decide the question; and the decision of the Tribunal shall be final and shall not be called in question by any Court or other authority.
>
> (3) The Tribunal shall consist of one person who is not connected with the Commission or with the person by whom the sum is alleged to be payable.
>
> (4) The expense of the Tribunal shall be borne by the Commission."

8. On a bare reading of Sub-Sections (1) and (2) of Section 19-B, it becomes apparent that the provisions contained in Sub-Section (2) would be attracted only when it is disputed that the amount sought to be recovered is not recoverable as arrears of land revenue. In the present case, neither in the representation submitted by the petitioner (Annexure 6) nor in the writ petition, any such dispute is raised that the amount sought to be recovered vide recovery citation (Annexure 7) is not recoverable as arrears of land revenue. As such, the submission of the learned counsel for the petitioner that the recovery proceedings initiated by respondents Nos. 1 and 2 are bad in law, cannot be accepted.

9. The learned counsel for the petitioner then submitted that the respondents cannot charge interest at the rate of 11%, as the agreed rate as per the loan agreement was 4% only.

10. We need not dilate much on this issue as admittedly the loan agreement contained a stipulation that in the event of default in payment of instalment, the interest would be charged at the rate of 11%

11. For the foregoing reasons, the reliefs sought by the petitioner cannot be granted.

12. We further notice from the order sheet dated 29.11.2002 that the learned counsel for the petitioner made a statement at the Bar that the

petitioner shall deposit Rs. 2,30,000/- with respondents Nos. 3 and 4. The learned counsel for the petitioner is not in a position to make a positive statement today that the petitioner has deposited the sum of Rs. 2,30,000/- with respondents Nos. 3 and 4.

13. Be that as it may, as we do not find any good ground for grant of any of the reliefs sought by the petitioner in the writ petition, the same is liable to be dismissed and is, hereby, dismissed. No order as to costs.

(M.M. Ghildiyal, J.)
28.03.2006

(Rajeev Gupta, C.J.)
28.03.2006

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